The Cartoon Network LP. LLLP et al v. CSC Holdings, Inc. et al Doc. 43

PUBLIC FILING VERSION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TWENTIETH CENTURY FOX FILM CORP., et al.,
Plaintiffs,

v. 06 Civ. 3990 (DC)

CABLEVISION SYSTEMS CORP., et al.,
Defendants.

---X

CABLEVISION SYSTEMS CORP., et al.,
Counterclaim-Plaintiffs,

v.

TWENTIETH CENTURY FOX FILM CORP., et al.,
Counterclaim-Defendants.

---X

THE CARTOON NETWORK LP, LLLP, et al.,
Plaintiffs,

v. 06 Civ. 4092 (DC)

CSC HOLDINGS, INC., et al.,
Defendants.

---X

CABLEVISION SYSTEMS CORP., et al.,
Counterclaim-Plaintiffs,

v.

THE CARTOON NETWORK LP, LLLP, et al.,
Counterclaim-Defendants.

---X

CABLEVISION SYSTEMS CORP., et al.,
Third-Party-Plaintiffs,

v.

TURNER BROADCASTING SYSTEM, INC., et al.,
Third-Party-Defendants.

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DEFENDANTS' RESPONSE TO THE TURNER PLAINTIFFS' LOCAL CIVIL RULE 56.1 STATEMENT

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Defendants, counterclaim-plaintiffs, and third-party plaintiffs Cablevision Systems Corporation and CSC Holdings, Inc. (together, "Cablevision") submit this response ("Response") to the Turner Plaintiffs' statement of facts ("Statement") in accordance with Rule 56.1 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York. Cablevision incorporates into this Response the facts detailed in the statement of material undisputed facts submitted by Cablevision in support of its own motion for summary judgment.

RESPONSE TO TURNER PLAINTIFFS' STATEMENT

PARAGRAPH NO. 1

Plaintiff and Counterclaim Defendant The Cartoon Network LP, LLLP ("The Cartoon Network") is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. The Cartoon Network produces, creates and licenses, among other things, a network of programming distributed in the United States as the Cartoon Network, consisting of animated programming and non-animated programming related to animated topics. (Compl. ¶ 12.)

RESPONSE TO PARAGRAPH NO. 1

The facts stated in paragraph 1 of plaintiffs' Statement are undisputed for purposes of summary judgment.[1]

PARAGRAPH NO. 2

Plaintiff and Counterclaim Defendant Cable News Network LP, LLLP ("CNN") is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. CNN produces, creates and licenses, among other things, several networks of programming distributed in the United States including CNN, Headline News, and CNN en

[1] The facts described in this Response as "undisputed" are admitted only for purposes of summary judgment in the 06-3990 and 06-4092 litigations. Nothing in this Response should be construed as an admission of any fact for purpose of trial or for any other purpose. Cablevision explicitly reserves its right to contest any and all of plaintiffs' factual allegations at trial and outside the context of this litigation, and intends to strictly hold plaintiffs to their burden of proof on all matters in the event of trial. Further, by responding to a fact contained in plaintiffs' Statement, Cablevision does not waive its right to contest such fact as immaterial at trial and/or outside the context of this litigation.

Espanol, consisting of national and international news, sports programming, finance news, weather reports and features. (Compl. ¶¶ 2, 13.)

RESPONSE TO PARAGRAPH NO. 2

The facts stated in paragraph 2 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 3

Third-Party Defendant Turner Broadcasting System, Inc. is a Georgia corporation with its principal place of business in Atlanta, Georgia. Turner Broadcasting System, Inc. is the direct or indirect parent of The Cartoon Network, CNN, Turner Classic Movies LP, LLLP, and Turner Network Television LP, LLLP and Turner Network Sales, Inc. Turner Broadcasting System, Inc., among other things, also licenses a network of programming distributed in the United States as TBS and authorizes distribution of WTBS within the Atlanta designated market. (Reply ¶¶ 53, 55.)

RESPONSE TO PARAGRAPH NO. 3

The facts stated in paragraph 3 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 4

Third-Party Defendant Turner Network Sales, Inc. is a Georgia corporation with its principal place of business in Atlanta, Georgia. Among other things, Turner Network Sales, Inc. licenses certain programming on the Turner networks as network programming and in other media. (Reply 155.)

RESPONSE TO PARAGRAPH NO. 4

The facts stated in paragraph 4 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 5

Third-Party Defendant Turner Classic Movies LP, LLLP (as Turner Classic Movies, L.P., LLLP is formally known) is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. Among other things, Turner Classic Movies LP, LLLP produces, creates and licenses a network of programming distributed in the United States as Turner Classic Movies. (Reply ¶ 56.)

RESPONSE TO PARAGRAPH NO. 5

The facts stated in paragraph 5 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 6

Third-Party Defendant Turner Network Television LP, LLLP is a Delaware Limited Liability Limited Partnership with its principal place of business in Atlanta, Georgia. Among other things, Turner Network Television LP, LLLP produces, creates and licenses a network of programming distributed in the United States as Turner Network Television consisting of movies, dramatic shows, situation comedies, game shows and live professional sports. (Reply ¶ 57.)

RESPONSE TO PARAGRAPH NO. 6

The facts stated in paragraph 6 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 7

CNN owns the copyrights to a large amount of programming including individual episodes of popular programs such as *Larry King Live, Anderson Cooper 360°* and *Lou Dobbs Tonight.* (Copyright Registrations (tab 7).)

RESPONSE TO PARAGRAPH NO. 7

The facts stated in paragraph 7 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 8

The Cartoon Network owns the copyrights to a large amount of programming including individual episodes of popular programs such as *Codename: Kids Next Door, Camp Lazlo* and *Aqua Teen Hunger Force.* (Copyright Registrations (tab 8).)

RESPONSE TO PARAGRAPH NO. 8

The facts stated in paragraph 8 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 9

The Turner Entities license their programming for transmission as linear networks to all major cable operators, including Cablevision, as well as to direct broadcast satellite companies such as DirecTV and EchoStar (the Dish Network). (Channel Lineups (tab 9).)

RESPONSE TO PARAGRAPH NO. 9

Cablevision states that plaintiffs' licensing of programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 9 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 10

The Turner Entities license certain programming to cable operators for video-on-demand ("VOD") use. For example, certain of the Turner Entities have licensed Comcast to provide VOD programming branded in association with many of the Turner networks, including the Cartoon Network, Adult Swim (a separately branded programming block on the Cartoon Network), and CNN. (Materials from www.comcast.com (tab 10); TURNER 00022960-00022974 (tab 11) at TURNER 00022967, TURNER 00022969; TURNER 00012444-00012451 (tab 12) at TURNER 00012445.)

RESPONSE TO PARAGRAPH NO. 10

Cablevision states that plaintiffs' licensing of programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 10 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 11

CNN and The Cartoon Network derive substantial economic benefits from licensing copyrighted programming for VOD use. (TURNER 00001288-00001321, TURNER 00001269-00001286 (tab 13) at TURNER 00001282, TURNER 00001292, TURNER 00001298, TURNER 00001300.)

RESPONSE TO PARAGRAPH NO. 11

Cablevision states that the economic benefits plaintiffs receive from licensing programming as "video on demand" is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the evidence cited by plaintiffs in paragraph 11 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein.

PARAGRAPH NO. 12

CNN and The Cartoon Network license some of their copyrighted programming for sale on DVD. (Materials from www.amazon.com (tabs 14, 15).)

RESPONSE TO PARAGRAPH NO. 12

Cablevision states that plaintiffs' licensing of programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 12 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 13

CNN also makes certain programming available on the CNN.com website (http://www.cnn.com). (Materials from www.cnn.com (tab 16).)

RESPONSE TO PARAGRAPH NO. 13

Cablevision states that the fact that certain programming is available on the CNN.com website is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 13 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 14

The Cartoon Network makes certain programming available on the Cartoon Network website (htpp://www.cartoonnetwork.com) and the Adult Swim website (http://www.adultswim.com). (Materials from www.cartoonnetwork.com (tab 17); Materials from www.adultswim.com (tab 18).)

RESPONSE TO PARAGRAPH NO. 14

Cablevision states that the fact that certain programming is available on the Cartoon Network website is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 14 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 15

CNN makes certain programming available on its "CNN Pipeline" website (http://edition.cnn.com/pipeline/). A subscriber to CNN Pipeline can view programming either by selecting one of four live feeds that stream 24 hours a day or, alternatively, by selecting an individual news story. CNN generates revenues from daily, monthly and annual subscription fees for CNN Pipeline. The current subscription fees are $.99 per day, $2.95 per month or $24.95 per year. (Materials from www.cnn.com/pipeline (tab 19).)

RESPONSE TO PARAGRAPH NO. 15

Cablevision states that the fact that certain programming is available on the CNN Pipeline website, the subscription fees for the CNN Pipeline website, and the fact that plaintiffs derive revenue from such fees, are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 15 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 16

In July 2006, The Cartoon Network, in conjunction with VIZ media, launched a new website called Toonami Jetstream (http://www.ToonamiJetstream.com). On the Toonami Jetstream website, The Cartoon Network makes episodes of its copyrighted programming from the "Toonami" time-block, including episodes of the award-winning cartoon *Samurai Jack*, available for viewing. (Materials from www.toonamijetstream.com (tab 20); Press Release dated April 25, 2006 (tab 21).)

RESPONSE TO PARAGRAPH NO. 16

Cablevision states that the fact that certain programming is available on the Toonami Jetstream website is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 16 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 17

CNN and The Cartoon Network have licensed selected programming for download on Apple's iTunes. (Byko Tr. (tab 3) at 148:22-149:9.) For example, episodes from selected seasons of the Cartoon Network's *Johnny Bravo,* of Adult Swim's cartoons *Aqua Teen Hunger Force, The Venture Bros.* and *Sealab 2021,* and selected programming from CNN's documentary series *CNN Presents* can be downloaded for $1.99 per episode. (Materials from www.itunes.com (tab 22); Press Release dated August 1, 2006 (tab 23).) CNN and The Cartoon Network make additional programming available on iTunes for free. (Press Release dated August 1, 2006 (tab 23).)

RESPONSE TO PARAGRAPH NO. 17

Cablevision states that the fact that certain programming is available on Apple's iTunes for downloading is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 17 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 18

CNN and The Cartoon Network license certain copyrighted programming to cellular phone providers. (Byko Tr. (tab 3) at 148:22-149:9.) Certain subscribers to Cingular's phone service can pay a monthly fee to receive video downloads of programming from several television networks, including CNN and the Cartoon Network. (Materials from www.cingular.com (tab 24).)

RESPONSE TO PARAGRAPH NO. 18

Cablevision states that the fact that certain programming is available for downloading from cellular phone providers is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 18 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 19

The Turner Entities are constantly exploring novel and technologically advanced methods of licensing their copyrighted works or otherwise exploiting their value. (Byko Tr. (tab 3) at 148:22-149:9.)

RESPONSE TO PARAGRAPH NO. 19

Cablevision states that methods plaintiffs employ to license programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 19 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 20

Defendants CSC Holdings, Inc. and Cablevision Systems Corporation (collectively "Cablevision") are Delaware corporations, each with its principal place of business in Bethpage, New York. Defendant Cablevision Systems Corporation is a publicly traded company, whose holdings include all of the outstanding stock of Defendant CSC Holdings, Inc. (Compl. ¶ 14; Answer ¶ 14.)

RESPONSE TO PARAGRAPH NO. 20

The facts stated in paragraph 20 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 21

Cablevision is a large cable operator with approximately three million subscribers in and around the New York City metropolitan area. (Compl. ¶ 15; Answer ¶ 15.)

RESPONSE TO PARAGRAPH NO. 21

The facts stated in paragraph 21 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 22

Cablevision carries a number of Turner's linear networks including the Cartoon Network, CNN, Headline News, and CNN en Espanol. (Answer ¶¶ 54, 56-58.)

RESPONSE TO PARAGRAPH NO. 22

The facts stated in paragraph 22 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 23

Video-on-demand ("VOD") programming is programming delivered by a cable service operator at a time chosen by the subscriber. (Compl. ¶ 17; Answer ¶ 17.)

RESPONSE TO PARAGRAPH NO. 23

Cablevision states that the definition of the term "video on demand" (or "VOD") is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the facts contained in paragraph 23 of plaintiffs' Statement are disputed in part. Cablevision does not dispute that the statement in paragraph 23 sets forth one possible definition of the term "video-on-demand" (or "VOD"), but disputes that there is a uniform or standard industry definition of the term. *See* Hemani Decl., Ex. C, Deposition of Edward McRae Budill ("Budill Dep."), dated July 25, 2006, at 16:5-17:11; Hemani Decl., Ex. G, Deposition of Michael DeHart, dated August 2, 2006, at 184:18-185:21. Cablevision further disputes that the definition stated in paragraph 23 is consistent with the meaning or meanings intended by Cablevision as that term has been used in Cablevision-authored documents or other Cablevision communications. Hemani Decl., Ex. C, Budill Dep. at 112:4-23.

PARAGRAPH NO. 24

Cablevision offers certain programming on an on demand, or video-on-demand basis. (Budill Tr. (tab 2) at 25:14-26:10.)

RESPONSE TO PARAGRAPH NO. 24

Cablevision states that the facts contained in paragraph 24 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 24 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 25

Cablevision offers VOD programming to its subscribers on several bases, including pay-per-view VOD, "free" VOD (in which subscribers pay nothing beyond the regular monthly cable bill) and subscription VOD ("SVOD"), in which subscribers pay a monthly fee for access to certain content. (Compl. ¶ 17; Answer ¶ 17; Budill Tr. (tab 2) at 31:17-34:6.)

RESPONSE TO PARAGRAPH NO. 25

Cablevision states that the facts contained in paragraph 25 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 25 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 26

Cablevision regularly obtains licenses from programming providers for the right to transmit their programming as a linear network. (Budill Tr. (tab 2) at 20:19-21:19.)

RESPONSE TO PARAGRAPH NO. 26

Cablevision states that the facts contained in paragraph 26 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 26 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 27

An "affiliation agreement" is a contract "between a content provider and a distributor of that content, the terms of which govern the rights and obligations of each party vis-a-vis the distribution of that content". (Budill Tr. (tab 2) at 9:19-10:19.)

RESPONSE TO PARAGRAPH NO. 27

Cablevision states that the definition of the term "affiliation agreement" is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract. Cablevision further states that the facts contained in paragraph 27 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 28

Certain of the Turner Entities have entered into affiliation agreements with Cablevision for the right to transmit the linear network feed for the CNN network, Headline News, and CNN en Espanol, all of which are owned and operated by CNN, and the linear broadcast feed for the Cartoon Network, which is owned and operated by The Cartoon Network. (Compl. ¶¶ 12, 13; Answer ¶¶ 12, 13.)

RESPONSE TO PARAGRAPH NO. 28

Cablevision states that the terms of any affiliation agreements between Cablevision and plaintiffs are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 28 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 29

Cablevision does not distribute any programming belonging to a Turner Entity, including The Cartoon Network or CNN, as part of its regular cable television broadcast in the absence of a license. (Budill Tr. (tab 2) at 23:5-13.)

RESPONSE TO PARAGRAPH NO. 29

Cablevision states that plaintiffs' licensing of programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 29 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 30

The Cartoon Network entered into a licensing agreement with Cablevision Systems Corporation and several Cablevision affiliates on August 30, 1992 (the "Cartoon Network Affiliation Agreement" (tab 25)).

RESPONSE TO PARAGRAPH NO. 30

Cablevision states that the affiliation agreements between Cablevision and plaintiffs are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states the facts contained in paragraph 30 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 31

REDACTED

RESPONSE TO PARAGRAPH NO. 31

REDACTED

PARAGRAPH NO. 32

REDACTED

RESPONSE TO PARAGRAPH NO. 32

REDACTED

PARAGRAPH NO. 33

REDACTED

RESPONSE TO PARAGRAPH NO. 33

REDACTED

REDACTED

PARAGRAPH NO. 34

CNN entered into a licensing agreement with CSC Holdings, Inc. and several Cablevision affiliates in December 1992 (the "CNN Affiliation Agreement" (tab 26)).

RESPONSE TO PARAGRAPH NO. 34

Cablevision states that the affiliation agreements between Cablevision and plaintiffs are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 34 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 35

REDACTED

RESPONSE TO PARAGRAPH NO. 35

REDACTED

PARAGRAPH NO. 36

REDACTED

REDACTED

RESPONSE TO PARAGRAPH NO. 36

REDACTED

PARAGRAPH NO. 37

REDACTED

RESPONSE TO PARAGRAPH NO. 37

REDACTED

PARAGRAPH NO. 38

Cablevision has entered into licensing agreements with a number of programming providers for the right to transmit programming as VOD. (Budill Tr. (tab 2) at 48:8-49:17.)

RESPONSE TO PARAGRAPH NO. 38

Cablevision states that the fact it has entered into licensing agreements with content providers for VOD programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 38 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 39

There is no instance in which Cablevision transmits VOD programming without "some form of agreement either written or oral" from the programming provider for the right to transmit that programming. (Budill Tr. (tab 2) at 25:3-27:23, 35:25-36:18, 40:18-41:12, 48:8-49:17.)

RESPONSE TO PARAGRAPH NO. 39

Cablevision disputes plaintiffs' use of the term "transmit," as that term is a legal characterization and not a statement of fact. Cablevision further states that the agreements between Cablevision and any programming provider are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 39 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 40

Cablevision's licensing agreements for VOD programming contain standard terms pertaining to Cablevision's right to use the programming **REDACTED**

REDACTED

RESPONSE TO PARAGRAPH NO. 40

Cablevision states that the terms of any agreements between Cablevision any programming providers are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations, as no party to these actions has alleged a claim of breach of contract against Cablevision. Cablevision further states that the facts contained in paragraph 40 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 41

Cablevision benefits from its ability to transmit VOD programming to its subscribers. Cablevision generates revenue from fees it charges its subscribers for certain VOD programming. (Budill Tr. (tab 2) at 31:17-24.) Additionally, the ability to offer VOD programming helps Cablevision to attract or retain subscribers because direct broadcast satellite companies cannot offer VOD programming. (Budill Tr. (tab 2) at 35:4-24, 37:6-38:7.)

RESPONSE TO PARAGRAPH NO. 41

Cablevision disputes plaintiffs' use of the term "transmit," as that term is a legal characterization and not a statement of fact. Cablevision further states that the benefits derived from its ability to offer VOD programming to its subscribers is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 41 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 42

Cablevision does not have an agreement with any of the Turner Entities for the right to provide any programming on the Turner Networks as VOD. (Budill Tr. (tab 2) at 49:18-22; Answer ¶ 18.)

RESPONSE TO PARAGRAPH NO. 42

Cablevision states that the programming it is able to offer as VOD over its networks are not facts that are material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 42 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 43

Cablevision has not obtained any license or authorization from any programming provider for the right to reproduce, distribute, or transmit programming as part of its RS-DVR Service. (Budill Tr. (tab 2) at 51:7-53:11, 75:1-76:3.)

RESPONSE TO PARAGRAPH NO. 43

Cablevision disputes the characterization of the facts contained in paragraph 43 of plaintiffs' Statement, and states that Cablevision determined that it was not legally required to obtain licenses from copyright owners to operate the RS-DVR, and accordingly did not attempt to obtain such licenses. *See* Budill Dep. at 92:6-93:25.

PARAGRAPH NO. 44

A linear network feed is programming that is continuously streamed to cable television subscribers. (Compl. ¶ 4; Answer ¶ 4; DeHart Tr. (tab 4) at 31:13-15.)

RESPONSE TO PARAGRAPH NO. 44

Cablevision states that the definition of "linear network feed" is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the facts contained in paragraph 44 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 45

Cablevision receives its linear network feeds and VOD programming at a head-end. A "head-end" is a term used to describe "the point at which all programming is collected and formatted for placement on the cable system". (Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 1011 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 45

Cablevision states that where it receives linear network feeds and VOD programming from content providers is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 45 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 46

The Turner Entities send their linear network feeds to Cablevision via satellite. (Compl. ¶ 4; Answer ¶ 4; DeHart Tr. (tab 4) at 18:4-19.)

RESPONSE TO PARAGRAPH NO. 46

Cablevision states that the facts contained in paragraph 46 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 46 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 47

Cablevision transmits linear network feeds over cable lines to its subscribers. (Compl. ¶ 3; Answer ¶ 3.)

RESPONSE TO PARAGRAPH NO. 47

Cablevision states that the facts contained in paragraph 47 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 47 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 48

Cablevision does not make a copy of the programming it receives for transmission as a linear network in the course of delivering linear network feeds to its subscribers as part of its normal cable television service. (The Cartoon Network Affiliation Agreement (tab 25) ¶ 4C; The CNN Affiliation Agreement (tab 26) ¶ 4C.)

RESPONSE TO PARAGRAPH NO. 48

Cablevision states that the facts contained in paragraph 48 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmission," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 48 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 49

The same cable transmission goes to all subscribers in a logical geographic group called a "node". (Mitchko Tr. (tab 6) at 85:15-25, 198:25-199:17.)

RESPONSE TO PARAGRAPH NO. 49

Cablevision states that the facts contained in paragraph 49 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmission," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 49 of plaintiffs' Statement, and states that not all subscribers on a "node" are capable of receiving the same programming. *See* Hemani Decl., Ex. A, Declaration of Stephanie Mitchko in Support of Defendants' Motion for Summary Judgment ("Mitchko Decl."), dated August 25, 2006, at ¶ 42; Hemani Decl., Ex. B, Mitchko Dep. at 39:2-4 and accompanying errata; Hemani Decl., Ex. E, Expert Report of Paul Horowitz, dated Sept. 18, 2006 ("Horowitz Rep.") ¶¶ 48; Hemani Decl., Ex. H, Defendants' Responses to Plaintiffs' First Set of Interrogatories at 6.

PARAGRAPH NO. 50

The same signal is transmitted to all subscribers in the node, but the signal can only be viewed by a subscriber on his or her television if that subscriber's set-top box has the correct access information. (Mitchko Tr. (tab 6) at 38:13-21; Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 388 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 50

Cablevision states that the facts contained in paragraph 50 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmitted," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 50 of plaintiffs' Statement, and states that not all subscribers on a "node" are capable of receiving the same programming. *See* Hemani Dec., Ex. A, Mitchko Decl. ¶ 42; Hemani Decl., Ex. B, Mitchko Dep. at 39:2-4 and accompanying errata; Hemani Decl., Ex. E, Horowitz Rep. ¶¶ 48; Defendants' Responses to Plaintiffs' First Set of Interrogatories at 6.

PARAGRAPH NO. 51

VOD programming is transmitted to cable operators such as Cablevision on a periodic (generally weekly) basis in a non-linear form. (DeHart Tr. (tab 4) at 89:18-90:7.)

RESPONSE TO PARAGRAPH NO. 51

Cablevision states that how VOD programming is provided to Cablevision or other cable operations is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmitted," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 51 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 52

VOD programming is stored at the head-end as digital files. (Blattman Ex. 4 (tab 28) at Arroyo 000410; Mitchko Tr. (tab 6) at 355:5-23; CS0009271-286 (tab 29) at CS0009279-80.)

RESPONSE TO PARAGRAPH NO. 52

Cablevision states that the facts contained in paragraph 52 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 52 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 53

A "bit rate" is the number of bits of data transmitted per second. (Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 1000 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 53

Cablevision states that the definition of "bit rate" is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 53 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 54

Cablevision receives and stores VOD programming at a constant bit rate rather than a variable bit rate. (Mitchko Tr. (tab 6) at 231:22-25.)

RESPONSE TO PARAGRAPH NO. 54

Cablevision states that how it receives and stores VOD programming is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the evidence cited by plaintiffs in paragraph 54 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein.

PARAGRAPH NO. 55

VOD programming must be at a constant bit rate so that the cable operator can accurately determine the disk space required for storage of that programming and the bandwidth required for streaming that programming. (Blattman Tr. (tab 1) at 144:22-145:5, 194:25-195:19; Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 390 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 55

Cablevision states that the reason VOD programming is stored in a constant rather than variable bit rate is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-402 litigations. Cablevision further states that the facts contained in paragraph 55 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 56

When the Turner Entities provide programming to cable operators to use as VOD, they convert the programming to a constant bit rate before sending it to the cable operator. (DeHart Tr. (tab 4) at 87:23-90:12.)

RESPONSE TO PARAGRAPH NO. 56

Cablevision states that how plaintiffs send VOD programming to Cablevision or other cable operators is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 56 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 57

Cablevision transmits all programming over radio frequency bandwidth. There is a finite amount of bandwidth available, and Cablevision dedicates portions of the total bandwidth to different services it provides. For example, Cablevision dedicates portions of bandwidth to normal cable television service, to VOD, and to the RS-DVR Service. (Mitchko Tr. (tab 6) at 80:23-81:9, 346:2-347:15; CS0002936-941 (tab 30) at CS0002937-939.)

RESPONSE TO PARAGRAPH NO. 57

Cablevision states that the bandwidth available to Cablevision is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 57 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 58

When a subscriber orders VOD programming, the cable operator locates the programming on a server at its head-end and transmits that programming over a particular bandwidth. (DeHart Tr. (tab 4) at 35:15-37:22; CSCO09271-CS0009286 (tab 29) at CS0009279-280.)

RESPONSE TO PARAGRAPH NO. 58

Cablevision states that the facts contained in paragraph 58 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact.

PARAGRAPH NO. 59

When a subscriber requests VOD programming, that programming is transmitted to everyone in the node where that subscriber resides. (Mitchko Tr. (tab 6) at 38:1323; Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 388 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 59

Cablevision states that the facts contained in paragraph 59 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmitted," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 59 of plaintiffs' Statement, and states that not all subscribers on a "node" are capable of receiving the same programming. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶ 42; Hemani Decl., Ex. B, Mitchko Dep. at 39:2-4 and accompanying errata; Hemani Decl., Ex. E, Horowitz Rep. ¶¶ 48; Hemani Decl., Ex. H, Defendants' Responses to Plaintiffs' First Set of Interrogatories at 6.

PARAGRAPH NO. 60

Because bandwidth is limited, only a given number of subscribers in a node can view VOD programming at any one time. If too many subscribers request VOD programming at a time, some will receive an error or "please try again" message. (Mitchko Tr. (tab 6) at 342:5-343:17.)

RESPONSE TO PARAGRAPH NO. 60

Cablevision states that the facts contained in paragraph 60 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 60 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 61

A DVR is a stand-alone device that allows consumers to copy and store recorded programming for viewing at a later time on a hard drive contained within the device. Unlike a VCR, which makes analog copies on a videocassette, a DVR makes digital copies on a hard drive contained within the device. *(Dictionary of Video and Television Technology* (tab 31) 87 (2002).)

RESPONSE TO PARAGRAPH NO. 61

Cablevision states that the definition of the term "Digital Video Recorders" (or "DVRs") is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the facts contained in paragraph 61 of plaintiffs' Statement are disputed in part. Cablevision does not dispute that the statement in paragraph 61 sets forth one possible definition for set-top storage digital video recorders (or "STS-DVRs"). *See* Hemani Decl., Ex. A, Mitchko Decl., at ¶¶ 5, 12.

PARAGRAPH NO. 62

In 1999 a device branded as TiVo became the first commercially available DVR. (Answer ¶ 63.)

RESPONSE TO PARAGRAPH NO. 62

The facts stated in paragraph 62 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 63

The user directs the DVR to record programming, which can come from a linear network feed or from another source. (Mitchko Tr. (tab 6) at 20:25-23:9; Gottesman Ex. 4 (tab 32) at CSCO11909.)

RESPONSE TO PARAGRAPH NO. 63

Cablevision states that the facts contained in paragraph 63 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes that all DVRs can record programming from sources other than a linear network feed. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶ 6.

PARAGRAPH NO. 64

With a DVR, recording, storage, and playback of programming is considered "local to the box", because the hard drive where programming is recorded, stored, and played back from is inside the device itself. (DeHart Tr. (tab 4) at 107:21-108:15; Mitchko Ex. 31 (tab 33) at CSC000199.)

RESPONSE TO PARAGRAPH NO. 64

Cablevision states that the facts contained in paragraph 64 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 64 of plaintiffs' Statement are disputed in part. Cablevision does not dispute that the statement in paragraph 64 describes one form of DVR – namely, set-top storage DVRs (STS-DVRs) – but disputes that plaintiffs' description encompasses all forms of DVRs. Digital video recorders enable customers to record, store, and play back linear television programming through the use of digital technology, which may involve either a computer hard-disk drive located inside a set-top box or a computer hard-disk drive located on a server outside the customer's home. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 5, 12.

PARAGRAPH NO. 65

With a DVR, the user plays back programming from the internal hard drive, and that programming is displayed on the user's television. (Mitchko Tr. (tab 6) at 343:21-344:12.)

RESPONSE TO PARAGRAPH NO. 65

Cablevision states that the facts contained in paragraph 65 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 65 of plaintiffs' Statement are disputed in part. Cablevision does not dispute that the statement in paragraph 65 describes, in general, the playback functionality of one form of DVR, but disputes that plaintiffs' description encompasses the playback functionality for all forms of DVRs. Digital video recorders enable customers to record, store, and play back linear television programming through the use of digital technology, which may involve either a computer hard-disk drive located inside a set-top box or a computer hard-disk drive located on a server outside the customer's home. *See* Hemani Decl., Ex. A, Mitchko Decl. at ¶¶ 5, 12. Cablevision does not dispute that for all forms of DVRs, programming recorded by the user is played back from the hard drive and displayed on the user's television.

PARAGRAPH NO. 66

A set-top DVR is "a DVR embedded in a set-top [cable box] that is provided to a consumer by a cable operator". It is a "stand-alone device" in the subscriber's home. (DeHart Tr. (tab 4) at 76:7-18.)

RESPONSE TO PARAGRAPH NO. 66

Cablevision states that the facts contained in paragraph 66 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts stated in paragraph 66 of plaintiffs' Statement, and states the use of the term "stand-alone device" is misleading. A set-top storage digital video recorder may be integrated with a user's cable box and system, and require an interface with that system to function, as is the case with the SA 8300, or it may be a stand-alone device that is separate from a user's cable box, as is the case with TiVo and ReplayTV. *See* Hemani Decl., Ex. I, Deposition of Karen Byko ("Byko Dep."), dated August 3, 2006, at 128:11-15; Hemani Decl., Ex. G, Deposition of Michael DeHart ("DeHart Dep."), dated August 2, 2006, at 39:20-40:4, 194:17-25; Hemani Decl., Ex. J, Expert Report of Ted E. Hartson ("Hartson Rep."), dated September 18, 2006, at ¶¶ 35-36.

PARAGRAPH NO. 67

Cablevision has made set-top DVRs available to its subscribers since 2004. (Gottesman Tr. (tab 5) at 12:9-20.)

RESPONSE TO PARAGRAPH NO. 67

The facts stated in paragraph 67 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 68

Cablevision has recently announced that it intends to launch a new service, which it calls a Remote-Storage Digital Video Recorder ("RS-DVR"), which it will make available to its subscribers (the "RS-DVR Service"). (Budill Ex. 4 (tab 34); Answer ¶ 71.)

RESPONSE TO PARAGRAPH NO. 68

Cablevision disputes the characterization of the facts stated in paragraph 68 of plaintiffs' Statement, and states that plaintiffs' description of the RS-DVR as a "Service" as misleading.[2] Cablevision further states that the facts contained in paragraph 68 are undisputed for purposes of summary judgment.

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[2] This is a standing dispute that applies to all subsequent uses of the term "Service" by plaintiffs to describe the RS-DVR.

PARAGRAPH NO. 69

Cablevision intends to charge its subscribers an additional fee for the RS-DVR Service. (Answer ¶ 22; Gottesman Tr. (tab 5) at 124:14-25.)

RESPONSE TO PARAGRAPH NO. 69

Cablevision states that its intention to charge RS-DVR users an additional fee is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 69 are undisputed for purposes of summary judgment.

PARAGRAPH NO. 70

Cablevision will benefit financially if the RS-DVR Service is made available to its subscribers. (Gottesman Tr. (tab 5) at 56:22-57:11.)

RESPONSE TO PARAGRAPH NO. 70

Cablevision states that the profitability of the RS-DVR is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the evidence cited by plaintiffs in paragraph 70 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein. Cablevision stated that it expects the RS-DVR to offer "greater service flexibility" than the SA 8300 set-top DVR, and that if customers respond by ordering the RS-DVR in volume it will result in "increased revenue." Hemani Decl., Ex. K, Deposition of Patricia Gottesman ("Gottesman Dep."), dated August 1, 2006, at 56:15-57:7.

PARAGRAPH NO. 71

Cablevision believes that the ability to offer the RS-DVR Service will help Cablevision to attract or retain subscribers because direct broadcast satellite companies cannot offer an RS-DVR Service. (Gottesman Tr. (tab 5) at 60:21-62:17.)

RESPONSE TO PARAGRAPH NO. 71

Cablevision states that its belief regarding the ability of RS-DVR to attract or retain subscribers is not a fact that is material to resolution of the parties cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the evidence cited by plaintiffs in paragraph 71 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein. Cablevision stated that it "ha[s] not yet established any satellite win back plans specifically associated with the RS-DVR" and "ha[s] not yet considered the role that an RS-DVR would play in satellite win back." Hemani Decl., Ex. K, Gottesman Dep. at 61:4-7, 61:20-22. Cablevision stated that "[i]t would be logical" that RS-DVR, like STS-DVRs, would assist in winning back satellite customers because the RS-DVR offers users nearly identical functionality as STS-DVRs. *Id*. at 62:15-17.

PARAGRAPH NO. 72

The RS-DVR Service is "developed and ready for implementation." (Answer ¶ 7.)

RESPONSE TO PARAGRAPH NO. 72

The facts stated in paragraph 72 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 73

Cablevision designed and built the RS-DVR Service. (Mitchko Tr. (tab 6) at 207:25-209:19, 234:10-23; Mitchko Ex. 17 (tab 35) at CS0001445.)

RESPONSE TO PARAGRAPH NO. 73

Cablevision states that the facts contained in paragraph 73 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the facts stated in paragraph 73 of plaintiffs' Statement are disputed in part. Cablevision does not dispute that it participated in the design of the general architecture of the RS-DVR system and that it designed and built certain components of the RS-DVR. Cablevision also states that the RS-DVR is comprised of multiple components, several of which were designed and built by third-party vendors to Cablevision's specifications. Cablevision further states that certain components of the RS-DVR system are not specific to the RS-DVR system itself, such as the SA 8300 remote control, the user's set-top box, and the network of wires, relays, switches, and radio frequency devices. *See* Hemani Decl., Ex. B, Mitchko Dep. at 51:23-25, 72:19-25, 104:19-105:2; 125:22-25; Hemani Decl., Ex. L, Blattman Dep. 10:3-7, Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 11-13.

PARAGRAPH NO. 74

Cablevision can decide which linear networks it wants to make available as part of the RS-DVR Service. (Mitchko Tr. (tab 6) at 56:6-57:11; Mitchko Ex. 25 (tab 36) at CS0002974.)

RESPONSE TO PARAGRAPH NO. 74

Cablevision states that the facts contained in paragraph 74 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization in paragraph 74 of plaintiffs' Statement and states that RS-DVR will enable customers with non-DVR digital cable boxes to record the same television programming as Cablevision customers who have the SA 8300 cable box – namely, all linear programming within the specific tier of programming for which the customer has paid (which includes prescheduled pay-per-view, but not VOD or non-traditional interactive services). Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 6, 12, 15; Hemani Decl., Ex. K, Gottesman Dep. at 245:4-8.

PARAGRAPH NO. 75

At one point, Cablevision planned to only make 50 linear networks available to RS-DVR Service technical trial participants. (Mitchko Ex. 36 (tab 37) at CSC000004; CSC009997-10045 (tab 38) at CSC010001.) Cablevision also considered allowing only 5 or 12 linear networks to be recorded as part of the RS-DVR Service technical trial. (CS0009747-753 (tab 40) at CS0009748; CSC000733-742 (tab 41) at CSC000735.)

RESPONSE TO PARAGRAPH NO. 75

Cablevision states that the facts contained in paragraph 75 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization in paragraph 75 of plaintiffs' Statement, and states that the parameters of the RS-DVR technical trial originally scheduled for June 2006 were that participants would be able to record and play back standard-definition linear video programming on fifty of the channels carried on Cablevision's cable systems. *See* Hemani Decl., Ex. C, Budill Dep. at 85:21-86:4; Hemani Decl., Ex. Q, Budill Ex. 7 at CSC002957-CSC002964.

PARAGRAPH NO. 76

Cablevision did not plan to make high definition channels, music channels or pay-per-view available for the RS-DVR Service technical trial. (Mitchko Tr. (tab 6) at 56:614; Mitchko Ex. 36 (tab 37) at CSC000006; Mitchko Ex. 37 (tab 42) at CSC000041.)

RESPONSE TO PARAGRAPH NO. 76

Cablevision states that the facts contained in paragraph 76 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 76 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 77

Cablevision, and not Cablevision's subscribers, will maintain a database of every request by an RS-DVR Service subscriber; this database will be accessible by a Cablevision system administrator, but not by Cablevision subscribers. (Mitchko Tr. (tab 6) at 31:10-34:21.)

RESPONSE TO PARAGRAPH NO. 77

Cablevision states that the facts contained in paragraph 77 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization in paragraph 77 of plaintiffs' Statement, and states that the RS-DVR system includes servers that manage the data necessary to run the system, including a database that keeps track of the recordings made by individual customers, and that a system administrator will have access to such servers in order to perform repairs or other maintenance to the system. **REDACTED**

REDACTED

PARAGRAPH NO. 78

Cablevision, and not Cablevision's subscribers, have control over the software that controls the duplication and storage duplication of programming as part of the RS-DVR Service. (Mitchko Tr. (tab 6) at 50:8-51:5.)

RESPONSE TO PARAGRAPH NO. 78

Cablevision states that the facts contained in paragraph 78 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 78 of plaintiffs' Statement are disputed in part. While Cablevision does not dispute that its customers do not have access to the software code run on the RS-DVR system, customers have control over all recordings made using the RS-DVR. If no Cablevision customer issues a recording command for a particular program, no copy of that program is ever written to disk in any customer's storage. If a customer commands the recording of programming, the command initiates a chain of automated processes involving computer hardware and software located in Cablevision's head-end that ultimately results in a separate recording of the program being written to a specific hard drive on a computer server located at Cablevision's facilities. Through the use of identifiers, each copy is uniquely associated with the set-top box through which the record command was sent, and can be retrieved only by that same set-top box. Except for the customer's decision to make a recording, the recording process is entirely automated and involves no human intervention or decision-making by any employee at Cablevision. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 13, 14, 16-27, 29, 31, 36, 38, 41; Hemani Decl., Ex. B, Mitchko Dep. at 47:13-48:3, 61:8-23, 63:12-24.

PARAGRAPH NO. 79

Cablevision intends to provide customer service for the RS-DVR Service. (CSC003031-032 (tab 43) at CSC003032; CSC003128 (tab 44).)

RESPONSE TO PARAGRAPH NO. 79

Cablevision states that its intention to provide customer service for the RS-DVR is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 79 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 80

Cablevision intends to market the RS-DVR Service. (Gottesman Tr. (tab 5) at 44:18-24.)

RESPONSE TO PARAGRAPH NO. 80

Cablevision states that its intention to market the RS-DVR is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 80 are undisputed for purposes of summary judgment.

PARAGRAPH NO. 81

Servers located at Cablevision's head-end and the software that runs on those servers are necessary for copying and transmitting programming as part of the RS-DVR Service. (Blattman Tr. (tab 1) at 191:23-193:4.)

RESPONSE TO PARAGRAPH NO. 81

Cablevision disputes plaintiffs' use of the term "transmitting," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts stated in paragraph 81 of plaintiffs' Statement, and states that servers located at Cablevision's head-end and the software that runs on those servers are necessary components of the RS-DVR system, which allows users to record linear programming within the specific tier of programming for which the customer has paid (which includes prescheduled pay-per-view, but not Video on Demand or non-traditional interactive services), and to play back their unique copy of recorded programming at a time of their choosing. *See* Hemani Decl., Ex. L, Deposition of Kirk Blattman ("Blattman Dep."), dated August 11, 2006, at 191:23-193:4; Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 6, 15, 25-27, 38-39.

PARAGRAPH NO. 82

Cablevision has purchased the hardware for the RS-DVR Service. (Blattman Tr. (tab 1) at 188:17-189:4; Mitchko Ex. 17 (tab 35) at CSC001453; Mitchko Ex. 33 (tab 45) at CSC000773; CSC007463 (tab 47).)

RESPONSE TO PARAGRAPH NO. 82

Cablevision states that the fact it has purchased the hardware servers for the RS-DVR system is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 82 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 83

Cablevision has licensed the necessary software for the RS-DVR Service, some of which was written at Cablevision's request specifically for the Service. (Blattman Tr. (tab 1) at 189:5-191:22; CSC001256 (tab 46); Mitchko Ex. 17 (tab 35) at CSC001453; Mitchko Ex. 33 (tab 45) at CSC000773.)

RESPONSE TO PARAGRAPH NO. 83

Cablevision states that the fact it has licensed software for use in the RS-DVR system is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 83 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 84

All of the hardware components of the RS-DVR Service that ingest, copy, store and transmit programming are located in a Cablevision facility in Hicksville, NY. (Mitchko Tr. (tab 6) at 233:15-235:14; Mitchko Tr. (tab 6) at 248:23-250:8.)

RESPONSE TO PARAGRAPH NO. 84

Cablevision disputes plaintiffs' use of the term "transmit," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 84 of plaintiffs' Statement are disputed in part. The RS-DVR allows users to record linear programming within the specific tier of programming for which the customer has paid (which includes prescheduled pay-per-view, but not VOD or non-traditional interactive services), and to play back their unique copy of recorded programming at a time of their choosing. The RS-DVR functions using various hardware components, some of which are located at Cablevision's facilities, including Cablevision's Hicksville, New York facility. In addition, the advanced remote control necessary to initiate recordings and to play back recorded programming is located within a customer's home. The set-top cable television receiver is likewise located within a customer's home. Further, the network of wires, relays, switches, and radio frequency devices that are necessary to both initiate recordings and to play back recordings to customers are not located entirely within Cablevision's Hicksville, New York facility. Cablevision does not dispute that several of the RS-DVR hardware components are located in its Hicksville, New York facility. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 13, 14, 16-27, 29, 31, 36, 38, 41; Hemani Decl., Ex. B, Mitchko Dep. at 233:15-235:14, 248:23-250:8.

PARAGRAPH NO. 85

Cablevision makes programming available for the RS-DVR Service by sending it from a component of Cablevision's cable system manufactured by BarcoNet that distributes linear networks for normal cable television service. (Mitchko Ex. 4 (tab 48); Mitchko Ex. 40 (tab 49) at CSC000022; Mitchko Tr. (tab 6) at 52:7-53:9.) This is the "source of all the [programming] content" for the RS-DVR Service. (Mitchko Tr. (tab 6) at 52:17-20.)

RESPONSE TO PARAGRAPH NO. 85

Cablevision states that the facts contained in paragraph 85 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 85 of plaintiffs' Statement are disputed in part. The language cited from the deposition transcript of Stephanie Mitchko is from a discussion of the "RS-DVR Trial Network Diagram," and applies to the technical trial that Cablevision had planned for June 2006. *See* Hemani Decl., Ex. B, Mitchko Dep. at 51:7-25. In commercial use, some programming will be made available to RS-DVR from other sources. *See* Hemani Decl., Ex. N, Deposition of Bob Lee ("Lee Dep."), dated September 13, 2006, at 94-96.

PARAGRAPH NO. 86

As part of the RS-DVR Service, Cablevision splits the stream of programming containing the linear network feeds that it receives from programming providers into two separate streams of programming. Cablevision transmits one stream containing the linear network feeds for normal cable television service directly to Cablevision subscribers and transmits another stream containing the same linear network feeds into the system for the RS-DVR Service. (Mitchko Tr. (tab 6) at 52:2-53:9; Defendants' Responses to Plaintiffs' First Set of Interrogatories (tab 39) at 5 incorporating ¶ 48 of Defendants' Proposed Stipulated Facts and the definition of "Aggregated Programming Stream" from ¶ 232 (tab 50).)

RESPONSE TO PARAGRAPH NO. 86

Cablevision states that the facts contained in paragraph 86 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further states that the evidence cited by plaintiffs in paragraph 86 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein.

PARAGRAPH NO. 87

Most linear network feeds arrive at Cablevision at a variable bit rate. (Mitchko Tr. (tab 6) at 231:18-21.) In order for the RS-DVR Service to process the streams "the data must be converted to a constant bit rate". (Mitchko Ex. 40 (tab 49) at CSC000022) [footnote omitted].

RESPONSE TO PARAGRAPH NO. 87

Cablevision states that the facts contained in paragraph 87 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the number of networks that arrive over satellite at variable bit rate form is not a fact that is material to the resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 87 are disputed in part. With respect to the first sentence, Cablevision states that whether networks arrive over satellite at variable bit rate form depends on the service, and that it is not correct that Cablevision receives most services in variable bit rate form. *See* Hemani Decl., Ex. N, Lee Dep. at 62:8-14. The second sentence of paragraph 87 is undisputed for purposes of summary judgment.

PARAGRAPH NO. 88

Cablevision directs the linear network feeds for all the networks it chooses to make available as part of the RS-DVR Service, regardless of whether there has been a request for that programming, through a piece of equipment called a "clamper" manufactured by, and purchased from, BigBand Networks, Inc. (the "clamper"). (Mitchko Ex. 4 (tab 48); Mitchko Ex. 40 (tab 49) at CSC000022; Mitchko Tr. (tab 6) at 53:10-55:13, 57:12-17.)

RESPONSE TO PARAGRAPH NO. 88

Cablevision states that the facts contained in paragraph 88 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization in paragraph 88 of plaintiffs' Statement and states that RS-DVR will enable customers with non-DVR digital cable boxes to record the same television programming as Cablevision customers who have the SA 8300 cable box – namely, all linear programming within the specific tier of programming for which the customer has paid (which includes pre-scheduled pay-per-view, but not VOD or non-traditional interactive services). This programming will be streamed through a clamper. Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 6, 12, 15; Hemani Decl., Ex. K, Gottesman Dep. at 245:4-8; Hemani Decl., Ex. B, Mitchko Dep. at 57:15-17.

PARAGRAPH NO. 89

Cablevision uses the clamper to convert the feeds for each linear network it chooses to make available as part of the RS-DVR Service from a variable bit rate to a constant bit rate and from a multi-program transport stream to a single-program transport stream. (Mitchko Ex. 4 (tab 48); Mitchko Ex. 40 (tab 49) at CSC000022.)

RESPONSE TO PARAGRAPH NO. 89

Cablevision states that the facts contained in paragraph 89 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the facts stated in paragraph 89 of plaintiffs' Statement. *See* Hemani Decl., Ex. N, Lee Dep. at 62:8-14.

PARAGRAPH NO. 90

As Cablevision streams linear network feeds through the clamper, packets of digital data from the linear network feeds are duplicated in the clamper and stored in a buffer (the "clamping buffer") in order to facilitate the conversion of the linear network feed from a variable bit rate to a constant bit rate. (Blattman Ex. 29 (tab 51) at Arroyo 002408; Walter Ciciora et al., *Modern Cable Television Technology* (tab 27) 389-90 (2d ed. 2004).)

RESPONSE TO PARAGRAPH NO. 90

Cablevision states that the facts contained in paragraph 90 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the evidence cited by plaintiffs in support of paragraph 90 is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statements of fact contained therein. Neither document cited provides support for the statement that "packets of digital data from the linear network fees are duplicated in the clamper and stored in buffer (the 'clamping buffer') in order to facilitate the conversion of the linear network feed from a variable bit rate to a constant bit rate."

PARAGRAPH NO. 91

Programming for the RS-DVR Service must be at a constant bit rate so that Cablevision can accurately determine the disk space required for storage of that programming and the bandwidth required for transmitting that programming. (Blattman Tr. (tab 1) at 144:15-146:8.).

RESPONSE TO PARAGRAPH NO. 91

Cablevision disputes plaintiffs' use of the term "transmitting," as that term is a legal characterization and not a statement of fact. Cablevision further states that the facts contained in paragraph 91 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 91 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 92

Cablevision has purchased servers manufactured by Arroyo Video Solutions, Inc. ("Arroyo"), with software licensed from Arroyo (the "Arroyo server"), to ingest, copy, store, and transmit programming in the RS-DVR Service. (Mitchko Ex. 4 (tab 48); Blattman Tr. (tab 1) at 65:8-16, 188:17-191:22; Mitchko Tr. (tab 6) at 69:11-70:4.)

RESPONSE TO PARAGRAPH NO. 92

Cablevision states that the facts contained in paragraph 92 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmit," as that term is a legal characterization and not a statement of fact.

PARAGRAPH NO. 93

As part of the RS-DVR Service, Cablevision directs the "clamped" programming streams from the clamper to the Arroyo server with the use of a switch manufactured by and purchased from Ciena Corporation. (Mitchko Ex. 4 (tab 48); Mitchko Tr. (tab 6) at 57:18-25.).

RESPONSE TO PARAGRAPH NO. 93

Cablevision states that the facts contained in paragraph 93 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 93 of plaintiffs' Statement, and states that the use of the term "directs" is misleading to the extent that it suggests that there is ongoing oversight or decision-making by Cablevision or its employees during the RS-DVR recording process. Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 20, 31, 43.

PARAGRAPH NO. 94

Cablevision directs programming streams for all of the linear networks that Cablevision chooses to make available as part of the RS-DVR Service to the Arroyo server. (Blattman Tr. (tab 1) at 146:9-20.)

RESPONSE TO PARAGRAPH NO. 94

Cablevision states that the facts contained in paragraph 94 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 94 of plaintiffs' Statement, and states that the use of the term "directs" is misleading to the extent that it suggests that there is ongoing oversight or decision-making by Cablevision or its employees during the RS-DVR recording process. Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 20, 31, 43.

PARAGRAPH NO. 95

REDACTED

RESPONSE TO PARAGRAPH NO. 95

Cablevision disputes the characterization of the facts contained in paragraph 95 of plaintiffs' Statement, and states that **REDACTED**

REDACTED

PARAGRAPH NO. 96

Cablevision copies each programming stream into the primary ingestion buffer only once, regardless of how many subscribers have requested copies. (Mitchko Tr. (tab 6) at 316:17-318:2.).

RESPONSE TO PARAGRAPH NO. 96

Cablevision states that the facts contained in paragraph 96 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 96 of plaintiffs' Statement, and states that **REDACTED**

REDACTED

PARAGRAPH NO. 97

REDACTED

RESPONSE TO PARAGRAPH NO. 97

Cablevision states that the facts contained in paragraph 97 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the facts stated in paragraph 97 of plaintiffs' statement. *See* Hemani Decl., Ex. L, Blattman Dep. 154:20-22; 161:18-162:7; Hemani Decl., Ex. F, Blattman Decl. ¶ 7; Hemani Decl., Ex. E, Horowitz Rep. at 24, n.54.

PARAGRAPH NO. 98

REDACTED

PUBLIC FILING VERSION

RESPONSE TO PARAGRAPH NO. 98

Cablevision states that the facts contained in paragraph 98 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 98 of plaintiffs' Statement, and states that **REDACTED**

REDACTED

PARAGRAPH NO. 99

REDACTED

RESPONSE TO PARAGRAPH NO. 99

Cablevision states that the facts contained in paragraph 99 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the facts stated in paragraph 99 of plaintiffs' statement. *See* Hemani Decl., Ex. F, Blattman Dep. at 161:18-162:7.

PARAGRAPH NO. 100

REDACTED

RESPONSE TO PARAGRAPH NO. 100

Cablevision states that the facts contained in paragraph 100 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the evidence cited by plaintiffs in paragraph 100 of their Statement is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein. **REDACTED**

REDACTED

PARAGRAPH NO. 101

REDACTED

RESPONSE TO PARAGRAPH NO. 101

Cablevision states that the facts contained in paragraph 101 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the facts stated in paragraph 101 of plaintiffs' Statement. **REDACTED**

PUBLIC FILING VERSION

REDACTED

PARAGRAPH NO. 102

REDACTED

RESPONSE TO PARAGRAPH NO. 102

Cablevision states that the facts contained in paragraph 102 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 102 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 103

As part of the RS-DVR Service, Cablevision makes at least one complete reproduction of programming for every subscriber who has requested a copy of that programming. Thus, if 100 subscribers request that Cablevision copy the same program, Cablevision will make and store 100 separate copies of that program on hard drives in Cablevision's Arroyo servers. (Defendants' Responses to Plaintiffs' First Set of Interrogatories (tab 39) at 5; Blattman Tr. (tab 1) at 182:24-183:14.)

RESPONSE TO PARAGRAPH NO. 103

Cablevision disputes the characterization of the facts contained in paragraph 103 of plaintiffs' Statement, and states that when multiple customers copy the same program, a separate copy of the program is written to disk for each customer who issued a recording command for such program; a separate copy is stored in the storage capacity allocated to each customer. For example, if 1000 customers elect to record the February 25th 9:00 p.m. showing of Desperate Housewives, 1000 separate and distinct copies of that specific showing are made, each copy uniquely associated by identifiers with the set-top box of the customer who made the copy. Hemani Decl., Ex. A, Mitchko Decl. ¶ 29.

PARAGRAPH NO. 104

As part of the RS-DVR Service, Cablevision will store complete copies of programming on hard drives in Cablevision's Arroyo servers "within Cablevision's head-end facilities". (Budill Ex. 4 (tab 34); Mitchko Ex. 31 (tab 33) at CSC000199; Mitchko Ex. 37 (tab 42) at CSC000034.)

RESPONSE TO PARAGRAPH NO. 104

Cablevision disputes the characterization of the facts contained in paragraph 104 of plaintiffs' Statement, and states that RS-DVR customers will be able to record their own separate and distinct copies of programming onto servers located at Cablevision's head-ends. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶¶ 12-14, 21-27, 29, 31.

PARAGRAPH NO. 105

The copies of copyrighted programming stored on hard drives in Cablevision's Arroyo servers "will be identical, or substantially similar" to the original copyrighted programming. (Compl. ¶ 21; Answer ¶ 21.).

RESPONSE TO PARAGRAPH NO. 105

The facts stated in paragraph 105 of plaintiffs' Statement are disputed in part. When a customer makes a copy of in-progress programming, this copy will capture only some less portion of the original program. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶ 19. Moreover, artifacts may appear on a customer's private disk copy that did not appear in the original program. *See* Hemani Decl. Ex. E, Horowitz Rep. at 24 n.55.

PARAGRAPH NO. 106

Cablevision has designed the RS-DVR Service to allocate 80 gigabytes of storage per subscriber. (Mitchko Tr. (tab 6) at 45:23-46:13, 295:15-20; Blattman Tr. (tab 1) at 105:4-8.).

RESPONSE TO PARAGRAPH NO. 106

Cablevision disputes the characterization of the facts contained in paragraph 106 of plaintiffs' Statement, and states that Cablevision's technical trial scheduled for June 2006 allocated 80 gigabytes of storage per customer and that the RS-DVR will ultimately allot up to

160 giabytes of storage per customer. *See* Hemani Decl., Ex. B, Mitchko Dep. at 45:23-46:13, 295:15-20; Hemani Decl., Ex. L, Blattman Dep. at 105:4-8; Hemani Decl. Ex. R at CSC001633; CSC001636; CSC001637.

PARAGRAPH NO. 107

Cablevision will store copies for up to four individual RS-DVR Service subscribers on each hard drive. (Mitchko Tr. (tab 6) at 47:13-22.).

RESPONSE TO PARAGRAPH NO. 107

Cablevision disputes the characterization of the facts contained in paragraph 107 of plaintiffs' Statement, and states that each hard drive onto which a customer may record programming using the RS-DVR will contain the storage capacity for up to four customers. Hemani Decl., Ex. B, Mitchko Dep. at 47:13-22; Hemani Decl., Ex. A, Mitchko Decl. ¶ 14.

PARAGRAPH NO. 108

There are no physical partitions that separate the data associated with one RS-DVR Service subscriber from data associated with another subscriber, and the data associated with any one subscriber box does not exist in a contiguous block on the hard drive. (Blattman Tr. (tab 1) at 105:17-106:9, 106:21-107:4.) As a result, a particular segment of a disk could "be allocated to one user one day and a different user another day". (Blattman Tr. (tab 1) at 107:5-9.).

RESPONSE TO PARAGRAPH NO. 108

Cablevision states that the facts contained in paragraph 108 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 108 of plaintiffs' Statement, and states that all programming recorded by a given customer through a particular set-top box is stored on a given hard drive in a given Arroyo Server. Each hard drive will contain the storage capacity for up to four customers; however, because any given customer's copies are uniquely identified with his set-top box, any given customer's copies are accessible only by such customer and cannot be accessed by any other customer. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶ 14. Cablevision does not dispute that the storage is not partitioned.

PARAGRAPH NO. 109

If an RS-DVR Service subscriber requests that Cablevision delete stored programming, Cablevision will not affirmatively erase that programming, but rather Cablevision will render the programming unavailable for streaming and will make that space on the hard drive available to be overwritten. (Blattman Tr. (tab 1) at 70:11-71:5, 77:25-78:15.).

RESPONSE TO PARAGRAPH NO. 109

Cablevision disputes the characterization of the facts contained in paragraph 109 of plaintiffs' Statement, and states that the evidence cited by plaintiffs in paragraph 109 is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein. *See* Hemani Decl., Ex. L, Blattman Dep. at 71:4-5; 78:14-15.

PARAGRAPH NO. 110

If an RS-DVR Service subscriber requests that Cablevision record programming and Cablevision is already storing 80 gigabytes worth of data for that subscriber, Cablevision will automatically overwrite the oldest programming that it recorded for that subscriber. That is, Cablevision will manage the programming that it stores for subscribers on a first-in, first-out basis. (Mitchko Tr. (tab 6) at 116:16-118:2; Mitchko Ex. 10 (tab 54) at CSC001541; Mitchko Ex. 37 (tab 42) at CSC000041.)

RESPONSE TO PARAGRAPH NO. 110

Cablevision disputes the characterization of the facts contained in paragraph 110 of plaintiffs' Statement, and states that if a customer schedules a program to be recorded in the future and the storage capacity allocated to such customer to store the programming in question is full at the time the program is to be recorded, the oldest recording will be overwritten. *See* Hemani Decl., Ex. B, Mitchko Dep. at 116:16-118:2. With respect to a command to record a program issued while the customer is watching the program, components of the RS-DVR run a series of processes to verify, *inter alia,* that there is available room in the storage capacity allocated to such customer to store the programming in question. Hemani Decl., Ex. A, Mitchko

Decl. ¶ 22. If that criterion is not met, the RS-DVR, using software logic, directs the set-top box to display an error message on the television screen. Hemani Decl., Ex. A, Mitchko Decl. ¶ 23. In both of these cases, Cablevision does not control the process, as it happens automatically in response to customer commands. Hemani Decl., Ex. A, Mitchko Decl. ¶ 20.

PARAGRAPH NO. 111

When an RS-DVR Service subscriber requests Cablevision to play back stored programming, Cablevision uses the Asset Locator Service to determine where programming is located on the hard drives in Cablevision's Arroyo servers. (Mitchko Ex. 4 (tab 48); Mitchko Ex. 40 (tab 49) at CSC000023-24; Mitchko Tr. (tab 6) at 64:9-18.).

RESPONSE TO PARAGRAPH NO. 111

Cablevision states that the facts contained in paragraph 111 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 111 of plaintiffs' Statement, and states that when a recording is retrieved by the consumer the ALS determines the location from which the consumer retrieves his or her recorded content. Hemani Decl., Ex. B, Mitchko Dep. at 64:14-17. After a customer initiates the playing back of a program, the resulting electrical and mechanical processes that take place in the Arroyo Server happen automatically, meaning that they occur with no human intervention or human decision-making on the part of any Cablevision employee. Hemani Decl., Ex. A, Mitchko Decl. ¶ 43.

PARAGRAPH NO. 112

The RS-DVR Service "utilizes the same underlying playback engines that currently support VOD". (Mitchko Ex. 31 (tab 33) at CSC000202; Mitchko Tr. (tab 6) at 197:5-18.).

RESPONSE TO PARAGRAPH NO. 112

Cablevision states that the facts contained in paragraph 112 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 113

Cablevision streams, or transmits, the requested programming in the RS-DVR Service over the allocated bandwidth for the session. (Mitchko Tr. (tab 6) at 73:2-74:14; Mitchko Ex. 40 (tab 49) at CSC000023.)

RESPONSE TO PARAGRAPH NO. 113

Cablevision states that the facts contained in paragraph 113 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 113 of plaintiffs' Statement, and states that when a customer plays back a program that he or she has recorded, it occurs over bandwidth allocated for the session. Hemani Decl., Ex. B, Mitchko Dep. at 73:2-74:14; Hemani Decl., Ex. A, Mitchko Decl. ¶ 41.

PARAGRAPH NO. 114

When Cablevision plays back programming from its Arroyo servers to a subscriber as part of the RS-DVR Service, Cablevision transmits the same programming to all set-top boxes in the node of the requesting subscriber. (Mitchko Tr. (tab 6) at 39:2-4 and accompanying errata; Defendants' Responses to Plaintiffs' First Set of Interrogatories (tab 39) at 6.).

RESPONSE TO PARAGRAPH NO. 114

Cablevision states that the facts contained in paragraph 114 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 114 of plaintiffs' Statement, and states that when a customer plays a program that he or she has recorded, the stream containing the program that is sent to the set-top box through which the subscriber initiated playback is also streamed on the same RF signal that is delivered to every set-top box of every subscriber on a group of one to four adjacent nodes (with each node generally consisting of 500 homes or fewer), and therefore travels to every set-top box on the node group; however, the particular stream consisting of the program being played back by the subscriber can be received only by the subscriber who initiated the playback, because only that subscriber's set-top box has the conditional access (decryption) keys necessary to receive that stream. Hemani Decl., Ex. A, Mitchko Decl. ¶ 42; Hemani Decl., Ex. A, Mitchko Dep. at 39:2-4 and accompanying errata; Hemani Decl., Ex. H, Defendants' Responses to Plaintiffs' First Set of Interrogatories at 6.

PARAGRAPH NO. 115

REDACTED

RESPONSE TO PARAGRAPH NO. 115

Cablevision states that the facts contained in paragraph 115 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 115 of plaintiffs' Statement, and states that **REDACTED**

REDACTED

PARAGRAPH NO. 116

Cablevision informs the requesting subscriber's set-top box on which bandwidth the programming is being transmitted as part of the RS-DVR Service so that the set-top box can tune to that bandwidth. (Mitchko Ex. 40 (tab 49) at CSC000024; Mitchko Tr. (tab 6) at 84:17-85:7.).

RESPONSE TO PARAGRAPH NO. 116

Cablevision states that the facts contained in paragraph 116 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmitted," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 116 of plaintiffs' Statement, and states that the RS-DVR automatically directs the set-top box to tune to the correct frequency when the customer plays back recorded programming. *See* Hemani Decl., Ex. B, Mitchko Dep. at 84:17-85:7.

PARAGRAPH NO. 117

After Cablevision transmits programming as part of the RS-DVR Service, a complete copy of the program that has been transmitted remains stored on a hard drive in the Arroyo servers at Cablevision's head-end. (Defendants' Responses to Plaintiffs' First Set of Interrogatories (tab 39) at 5.) As a result, Cablevision can transmit the programming an indefinite number of times.

RESPONSE TO PARAGRAPH NO. 117

Cablevision states that the facts contained in paragraph 117 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmits," as that term is a legal characterization and not a statement of fact. Cablevision further disputes the characterization of the facts contained in paragraph 117 of plaintiffs' Statement, and states that whenever a Cablevision customer commands the recording of a given program, the customer makes one copy of such program on the allocated storage capacity dedicated to such customer on a hard-drive of a computer server located on Cablevision's premises. Each copy remains stored in the customer's allocated storage capacity on the hard-drive until it is deleted, either manually or as a result of the customer's recording programs in an amount that exceeds his or her dedicated storage capacity. Hemani Decl., Ex. H, Defendants' Responses to Plaintiffs' First Set of Interrogatories at 5.

PARAGRAPH NO. 118

If a subscriber requests that Cablevision transmit programming as part of the RS-DVR Service and all of the bandwidth allocated to the RS-DVR Service is already being used, Cablevision will not be able to send that programming and the subscriber will get an error message. (Mitchko Tr. (tab 6) at 342:5-343:2, 349:16-23.).

RESPONSE TO PARAGRAPH NO. 118

Cablevision states that the facts contained in paragraph 118 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes plaintiffs' use of the term "transmit," as that term is a legal characterization and not a statement of fact. Cablevision further states the evidence cited by plaintiffs is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein.

PARAGRAPH NO. 119

A March 27, 2006 article in Multichannel News by Matt Stump entitled "Digital Recording Comes Out of the Box" quoted Tom Rutledge, Cablevision's COO, speaking about the RS-DVR Service, saying that "[t]he VOD Platform lends itself to a variety of uses". The same article attributed the statement "[d]igital recording traffic will look a lot like video-on demand traffic in a cable network" to Wilt Hildenbrand, Cablevision's Executive Vice President of Engineering and Technology. (Article (tab 52) at 3.).

RESPONSE TO PARAGRAPH NO. 119

Cablevision states that the quotations stated in paragraph 119 of plaintiffs' statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision does not dispute that the language from the attached web site printout is quoted accurately, but disputes any characterization of the language contained therein and refers the Court to that web site printout for its complete and accurate contents.

PARAGRAPH NO. 120

In an engineering document entitled "RS-DVR Design and Architecture Overview", Cablevision originally referred to the RS-DVR Service architecture as "VOD architecture", but subsequently changed the name to "RS-DVR architecture". (Mitchko Ex. 23 (tab 55) at CSC0001647; Mitchko Ex. 40 (tab 49) at CSC000020.) The Cablevision witness was instructed not to answer, on the grounds of privilege, a question as to whether this change in terminology was based on legal advice. (Mitchko Tr. (tab 6) at 371:17-22.).

RESPONSE TO PARAGRAPH NO. 120

Cablevision states that nomenclature used to describe components of the RS-DVR are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 121

In an engineering document entitled "RS-DVR Design and Architecture Overview", Cablevision originally referred to the RS-DVR Service network as "the VOD network", but subsequently changed the name to "RS-DVR network". (Mitchko Ex. 23 (tab 55) at CSC001648; Mitchko Ex. 40 (tab 49) at CSC000021.) The Cablevision witness was instructed not to answer, on the grounds of privilege, a question as to whether this change in terminology was based on legal advice. (Mitchko Tr. (tab 6) at 372:19-23.

RESPONSE TO PARAGRAPH NO. 121

Cablevision states that nomenclature used to describe components of the RS-DVR are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 122

Cablevision documents state that the RS-DVR Service "will utilize an independent VOD system for storage and playback" and that "[a] new VOD system, provided by Arroyo will be implemented" for that purpose. (Mitchko Ex. 17 (tab 35) at CSC001445; CSC006626-640 (tab 53) at CSC006628.)

RESPONSE TO PARAGRAPH NO. 122

Cablevision disputes the characterization of the facts contained in paragraph 122 of plaintiffs' Statement, and states that nomenclature used to describe components of the RS-DVR are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 123

Cablevision documents state that in designing the RS-DVR Service, Cablevision did "[a]rchitecture modeling and cost analysis with next-generation VOD open platform vendors" such as Arroyo. (Mitchko Ex. 10 (tab 54) at CSC001540.)

RESPONSE TO PARAGRAPH NO. 123

Cablevision states that nomenclature used to describe components of the RS-DVR are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 124

In designing the RS-DVR Service, Cablevision referred to existing VOD architecture. (Mitchko Tr. (tab 6) at 138:7-139:5.)

RESPONSE TO PARAGRAPH NO. 124

Cablevision states that documents to which its engineers referred when designing the RS-DVR are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 124 of plaintiffs' Statement, and states that when designing the architecture of the RS-DVR, Cablevision referred to, among other sources, VOD architecture. Hemani Decl., Ex. B, Mitchko Dep. at 138:7-139:5.

PARAGRAPH NO. 125

The Arroyo servers that Cablevision is using for the RS-DVR Service "would be suitable for use in a small VOD system". (Blattman Tr. (tab 1) at 194:25-195:19; Blattman Ex. 5 (tab 56) at Arroyo 000271.)

RESPONSE TO PARAGRAPH NO. 125

Cablevision states that the fact that any hardware component of the RS-DVR, if configured differently, could be suitable for a different use, is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states the facts contained in paragraph 125 of plaintiffs' Statement are not disputed for purposes of summary judgment.

PARAGRAPH NO. 126

The term "trick mode" refers to the ability to pause, fast-forward or rewind programming. (Mitchko Tr. (tab 6) at 112:18-23.)

RESPONSE TO PARAGRAPH NO. 126

Cablevision states that the definition of the term "trick mode" is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 126 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 127

Cablevision made a decision to create the data required for trick modes in the RS-DVR Service "on the fly" rather than to store separate files for trick modes. (Blattman Tr. (tab 1) at 72:11-15; Mitchko Tr. (tab 6) at 114:2-5, 115:19-116:11.)

RESPONSE TO PARAGRAPH NO. 127

Cablevision states that the facts contained in paragraph 127 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision does not dispute that the trick modes in the RS-DVR are generated "on the fly."

PARAGRAPH NO. 128

In order to generate trick modes in the RS-DVR Service, Cablevision creates a buffer of packets of "trick video data" for one to two seconds of video. Those packets of data are streamed to the subscriber when he or she requests a trick mode such as fast-forward or rewind (the "trick mode buffer"). (Blattman Tr. (tab 1) at 72:11-76:9; Mitchko Ex. 21 (tab 57) at CSC001687.)

RESPONSE TO PARAGRAPH NO. 128

Cablevision states that the facts contained in paragraph 128 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 128 of plaintiffs' Statement, and states that in order to allow customers to utilize "trick play" functions while viewing programming they have recorded, the Arroyo Servers utilize a process known as "on the fly" trick play. In this process, data packets corresponding to the programming being viewed are placed into buffers to allow the system, for example, to skip certain data packets of the program on playback for "fast-forward" (giving the impression of accelerated movement on the television monitor), or to stream packets in reverse for "rewind." This buffering is done only in response to a specific customer command to implement trick play modes, and at no time is this buffering done in the absence of such a customer command. As described above, during this process, only small portions of one to two seconds of programming are placed in buffers at any time, where they reside for a brief, transitory period. Hemani Decl., Ex. F, Blattman Decl. ¶ 12.

PARAGRAPH NO. 129

The data used to create trick modes is not destroyed after it is used, but rather is returned to "the pool of free buffer resources". (Blattman Tr. (tab 1) at 76:22-77:5.)

RESPONSE TO PARAGRAPH NO. 129

Cablevision states that the facts contained in paragraph 129 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 129 of plaintiffs' Statement, and states trick mode files, after being streamed, are rendered unusable. Hemani Decl., Ex. L, Blattman Dep. at 76:20-24; 77:10.

PARAGRAPH NO. 130

Cablevision chose to design the RS-DVR Service such that the user experience for the RS-DVR Service would "mirror" or "mimic" the user experience for the Scientific Atlanta ("SA") set-top DVR that Cablevision provides to its subscribers. (Mitchko Tr. (tab 6) at 264:4-265:17; Mitchko Ex. 31 (tab 33) at CSC000199; CSC001672-CSC001681 (tab 58) at CSC001673.).

RESPONSE TO PARAGRAPH NO. 130

Cablevision states that the facts contained in paragraph 130 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 130 of plaintiffs' Statement, and states that the RS-DVR was designed to have the same basic functionality as the SA 8300 STS-DVR. Hemani Decl., Ex. K, Gottesman Dep. at 236:10-15.

PARAGRAPH NO. 131

Cablevision will provide RS-DVR Service subscribers with the same remote control that it provides to its set-top DVR subscribers. (Mitchko Ex. 37 (tab 42) at CSC000046.).

RESPONSE TO PARAGRAPH NO. 131

The facts stated in paragraph 131 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 132

The on-screen menu of programming for the RS-DVR Service will be similar to the on-screen menu of programming that Cablevision s subscribers use on a set-top DVR. (Gottesman Tr. (tab 5) at 65:6-24.).

RESPONSE TO PARAGRAPH NO. 132

The facts stated in paragraph 132 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 133

Cablevision's set-top DVR has two tuners, which allows the DVR to record up to two programs at once. (Gottesman Ex. 4 (tab 32) at CSC011912; Mitchko Tr. (tab 6) at 267:12-25.).

RESPONSE TO PARAGRAPH NO. 133

The facts stated in paragraph 133 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 134

In designing the RS-DVR Service, the number of simultaneous records that a subscriber is able to request are limited only by "bandwidth/business decisions". (Gottesman Ex. 4 (tab 32) at CSC011912; Mitchko Ex. 37 (tab 42) at CSC000042.).

RESPONSE TO PARAGRAPH NO. 134

Cablevision states that whether engineers considered other design possibilities is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 134 of plaintiffs' Statement and states and states that the RS-DVR will allow customers to record two programs at one time. Hemani Decl., Ex. B, Mitchko Dep. at 270:11-17.

PARAGRAPH NO. 135

Cablevision has chosen to design the RS-DVR Service such that Cablevision's software limits the number of simultaneous records that a subscriber can make to two. (Mitchko Tr. (tab 6) at 266:23-270:17; Mitchko Ex. 37 (tab 42) at CSC000042.)

RESPONSE TO PARAGRAPH NO. 135

Cablevision states that whether engineers considered other design possibilities is not a fact that is material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 135 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 136

Cablevision has "received legal advice regarding limiting the functionality of the RS-DVR Service". (Mitchko Tr. (tab 6) at 285:18-286:3.).

RESPONSE TO PARAGRAPH NO. 136

Cablevision states that whether it received legal advice in order to voluntarily comply with the Copyright Act is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 137

Cablevision originally planned to design the RS-DVR Service as a "household storage model", which would allow a subscriber to view transmitted programming from any set-top box in that subscriber's home. (Mitchko Tr. (tab 6) at 288:6-25; Mitchko Ex. 39 (tab 59) at CSC001684.) Cablevision subsequently changed the design of the RS-DVR Service to a "single box storage model", which limits a subscriber to viewing transmitted programming from the set-top box from which the record request was sent. (Mitchko Tr. (tab 6) at 289:2-10; Blattman Tr. (tab 1) at 56:24-57:16.).

RESPONSE TO PARAGRAPH NO. 137

Cablevision states that whether engineers considered other design possibilities is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 137 of plaintiffs' Statement, and states that the programs recorded using the RS-DVR can be viewed only from the set-top box through which the customer recorded the programs. *See* Hemani Decl., Ex. A, Mitchko Decl. ¶ 41.

PARAGRAPH NO. 138

Cablevision "received legal advice regarding whether to use a household storage model or a single box storage model". (Mitchko Tr. (tab 6) at 291:17-25.).

RESPONSE TO PARAGRAPH NO. 138

Cablevision states that whether it received legal advice in order to voluntarily comply with the Copyright Act is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations.

PARAGRAPH NO. 139

Cablevision intends to change the functionality of the RS-DVR Service in subsequent roll-outs. Cablevision documents state that "Initial development of the product will be completed in 2005 using the SA DVR look and feel and a limited feature set. Later phases of the project include the addition of new features and a complete redesign of the user interface to optimize the customer experience and revenue potential." (Gottesman Ex. 3 (tab 60) at CSC012261.) Examples of features that Cablevision intends to make available in subsequent roll-out phase(s) include *"10 Smart Suggestions* based on recording habits" and "Genre based suggestion lists. Sign up for the `New Mother' suggestions and pre-populate your DVR record list with the best baby programming on iO." (Id.).

RESPONSE TO PARAGRAPH NO. 139

Cablevision states that the facts contained in paragraph 139 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further disputes the characterization of the facts contained in paragraph 139 of plaintiffs' Statement, and states that the evidence cited by plaintiffs is not sufficient under Local Civ. R. 56.1(d) and Fed. R. Civ. P. 56(e) to support the statement of facts contained therein.

PARAGRAPH NO. 140

In a December 1, 2004 article entitled "Pipers at the Gates of Digital" published on Cable World's website, Mac Budill, Cablevision's Senior Vice President of Programming, was quoted as saying: "An important issue for all of us is the development of a network-based alternative to the in-home DVR experience. With support from our programming partners, we think that we can offer a service to our costumers that, among other advantages, is inexpensive, simple to use, measurable, and ultimately complementary to the interests of copyright holders and programmers." (Budill Ex. 3 (tab 61) at 3.)

RESPONSE TO PARAGRAPH NO. 140

Cablevision states that the quotation stated in paragraph 140 of plaintiffs' statement is not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision does not dispute that the language from the attached article is quoted accurately, but disputes any characterization of the language contained therein and refers the Court to that article for its complete and accurate contents.

PARAGRAPH NO. 141

REDACTED

RESPONSE TO PARAGRAPH NO. 141

REDACTED

PARAGRAPH NO. 142

REDACTED

RESPONSE TO PARAGRAPH NO. 142

REDACTED

PARAGRAPH NO. 143

REDACTED

RESPONSE TO PARAGRAPH NO. 143

REDACTED

PARAGRAPH NO. 144

On March 21, 2006, Cablevision sent letters to 89 content providers informing them of Cablevision's intended trial and launch of the RS-DVR Service. (Budill Ex. 4 (tab 34); Budill Tr. (tab 2) at 70:12-75:7.)

RESPONSE TO PARAGRAPH NO. 144

The facts stated in paragraph 144 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 145

Not a single content provider responded by authorizing inclusion of its programming in the RS-DVR Service. (Budill Tr. (tab 2) at 75:8-76:3.)

RESPONSE TO PARAGRAPH NO. 145

Cablevision states that the facts contained in paragraph 145 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 145 of plaintiffs' Statement are undisputed for purposes of summary judgment.

PARAGRAPH NO. 146

Turner offered to enter into licensing discussions for the RS-DVR Service, but Cablevision refused. (Budill Tr. (tab 2) at 91:20-93:25; CSC004354 (tab 64).) Cablevision "does not intend to negotiate" with any Turner entity "for new and separate licenses" for the RS-DVR Service. (Answer ¶ 6.)

RESPONSE TO PARAGRAPH NO. 146

Cablevision states that the facts contained in paragraph 146 of plaintiffs' Statement are not material to resolution of the parties' cross-motions for summary judgment in either the 06-3990 or 06-4092 litigations. Cablevision further states that the facts contained in paragraph 146 of plaintiffs' Statement are undisputed for purposes of summary judgment.

Dated: September 22, 2006
New York, New York

Respectfully submitted,

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